



Serial No.: 09/777,492
Docket No.: 257/103

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s) : Raul G. Barletta, N. Beth Harris.
Serial No. : 09/759,287
Filing Date : January 11, 2001
Title : Identification of Virulence Determinants
Group/Art Unit : 1645
Examiner : Rodney P. Swartz

Confirmation No. : 9782
Docket No. : UNL 2999.1 (801204-0011)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant Requests review of the final rejection made in the Office Action of August 1, 2006 in the above-identified application.

- No amendments are being filed with this request.
- This request is being filed concurrently with a Notice of Appeal.
- The review is requested for the reasons stated in the "Remarks" section on the attached sheets.

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REMARKS

In response to the Office Action dated August 1, 2006, the Examiner Interview conducted on December 12, 2006, and in conjunction with the Notice of Appeal submitted herewith, Applicant requests review of the final rejection of claims 15-42 and 54 of the above-identified application for the following reasons:

In the Office Action, under the heading “Rejections Maintained”, the Examiner maintains the rejection of all claims under 35 U.S.C. § 112, second paragraph, as indefinite for differentiation of “growing” from “nongrowing”. Specifically, the examiner then states that “it remains unclear how one distinguishes between the wanted and non wanted bacteria if the antimicrobial has ‘reduced affect’ on non-growing bacteria without some iteration of what constitutes ‘reduced’ affect. This reduction may be 0.1% or 100%, e.g., if the ‘reduced’ affect is only 0.1%, i.e., this means it results in the killing of 99.9% of non-growing bacteria. Thus, it is unclear what level of ‘reduced’ affect is acceptable for the instant invention.”

Applicant has submitted arguments in response to the examiner’s rejection, e.g., see Applicant’s Amendment After Final at page 7 (mailroom date 11-7-06) in explanation of why any level of “reduced” affect is acceptable for the instant invention. Notably, in a telephonic interview with the examiner held on December 12, 2006, Applicant reiterated the arguments presented in the referenced Amendment After Final and further argued that one skilled in the art would know to use a synchronous culture of mutated bacteria if s/he wanted to effect the number of non-growing but viable bacteria.

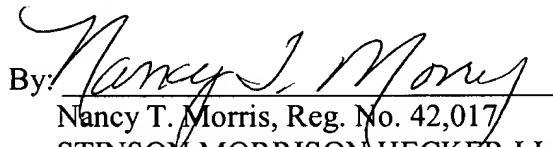
In summary, the phrase "reduced affect on" in independent claims 15, 28, 29, and 42 (and thus dependent claims 16-27, 30-41, and 54) is not indefinite. As such, the method differentiates "growing" from "nongrowing" and the examiner's rejection should be withdrawn.

In view of the foregoing remarks, it is respectfully submitted that the claims of the present application are in condition for allowance and eventual issuance. Such action is respectfully requested.

Should this Review Board have any further questions or comments that need be addressed in order to obtain allowance, it is invited to contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

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